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Report of the Ad Hoc Committee on the Administration of Justice at the United Nations

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Note

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Chapter I
Introduction

1. In compliance with General Assembly decision 62/551, the third plenary meeting of the Ad Hoc Committee on the Administration of Justice at the United Nations was convened on 5 August 2008, at United Nations Headquarters in New York. The Committee was re-established for the sole purpose of taking note of the oral report of the coordinator on the informal intersessional consultations and to request the Secretary-General to issue the coordinator's summary entitled "Coordinator's summary of the preliminary observations made in the informal consultations on the draft statute of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal" as an addendum to the report of the Ad Hoc Committee (A/63/55).

2. In the absence of the Chairperson of the Committee, Thomas Fitschen (Germany) chaired the meeting.

Chapter II
Proceedings

3. In his capacity as the coordinator of the intersessional informal consultations, Mr. Fitschen presented an oral report on the three rounds of informal consultations that he had conducted from 12 to 16 May, from 9 to 12 June and from 30 June to 3 July 2008.

4. At the same meeting, the Committee took note of the oral report of the coordinator.

5. Also at the same meeting, the Committee decided to append "Coordinator's summary of the preliminary observations made in the informal consultations and the intersessional informal consultations on the draft statute of the United Nations Dispute Tribunal", and "Coordinator's summary of the preliminary observations made in the informal consultations and the intersessional informal consultations on the draft statute of the United Nations Appeals Tribunal" as annexes I and II of the present report, respectively.

Annex I

Coordinator's summary of the preliminary observations made in the informal consultations and the intersessional informal consultations on the draft statute of the United Nations Dispute Tribunal

Explanation of terms and presentation by the coordinator:

- **Text in bold** and without brackets corresponds to proposals made during the informal consultations by one or more delegations or the coordinator which found broad support on an informal and preliminary basis and/or were not opposed by any delegation.
- [*Text in italics with brackets*] corresponds to proposals made by one or more delegations which one or more other delegation could not immediately accept or for the consideration of which more time was requested.
- The denomination "**option**" in brackets is used when — in the assessment of the coordinator — proposals have been made that can be seen as alternative solutions to a certain problem or question that was raised by delegations in regard to the original draft. This denomination is used solely for purpose of presentation to enhance the readability of the text and should not be understood as precluding the possibility of merging or combining the proposals or parts thereof.
- Where the right-hand column indicates that delegations have asked for further information or clarification, it is understood that the deliberations will have to come back to the text in question at a later stage.

Article as proposed in annex I to A/62/748 and Corr.1	*Alternative language proposed in informal consultations*
Article 1	**Article 1**
A tribunal is established by the present statute to be known as the United Nations Dispute Tribunal.	A tribunal is established by the present statute **as the first instance of the two-tier formal system of administration of justice**, to be known as the United Nations Dispute Tribunal.
Article 2	**Article 2**
1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided in article 3(1) of the present statute, against the United Nations, including separately administered United Nations funds and programmes:	1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided in article 3(1) of the present statute, against the **Secretary-General, as the Chief Administrative Officer of the United Nations**:

Article as proposed in annex I to A/62/748 and Corr.1	*Alternative language proposed in informal consultations*
(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the conditions of employment; or	(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the **contract** of employment. **The words "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-observance, including the staff pension regulations.** *(a bis) To appeal an administrative decision that is alleged to adversely affect entitlements granted to an individual by United Nations organs* [Russian Federation: This proposal was meant to complement art. 3(1)(d) and thus depends on the outcome of negotiations thereon].
(b) To appeal an administrative decision imposing a disciplinary measure.	(b) To appeal an administrative decision imposing a disciplinary measure. **(c) To enforce the implementation of an agreement reached through mediation pursuant to article 8(2) of the present statute.**
2. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by a staff member requesting a suspension of action in respect of a contested administrative decision that is the subject of an ongoing management evaluation. The Dispute Tribunal's decision on such an application shall not be subject to appeal.	The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by [*a staff member* [depends on article 3(2) below]] requesting **the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of** a contested administrative decision that is the subject of an ongoing management evaluation, **where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage**. The Dispute Tribunal's decision on such an application shall not be subject to appeal. [The United States acceptance of the text above is conditional on the deletion of article 10(2).]
3. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by a staff association, as provided in article 3(3) of the present statute, against the United Nations or separately administered United Nations funds and programmes: (a) To enforce the rights of staff associations, as recognized under the Staff Regulations and Rules;	**The Dispute Tribunal shall be competent to permit or deny leave to an application to file a friend-of-the-court brief by a staff association.** Delete the rest of the provision, on the understanding that the issue can be revisited once the new system is in function and more experience has been gathered. [United States]

Article as proposed in annex I to A/62/748 and Corr.1	*Alternative language proposed in informal consultations*
(b) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the conditions of employment, on behalf of a group of named staff members who are entitled to file such application under article 2(1) of the present statute and who are affected by the same administrative decision arising out of the same facts; or	Keep subparagraph (a) [G77 and China].
(c) To support an application filed by one or more staff members who are entitled to appeal the same administrative decision under article 2(1)(a) of the present statute, by means of the submission of a friend-of-the-court brief or by intervention.	**3bis. The Tribunal shall be competent to permit [staff members] who are entitled to appeal the same administrative decision under article 2(1)(a) to intervene in a matter brought by another staff member under article 2(1)(a).**
4. In the event of a dispute as to whether the Dispute Tribunal has competence under the present statute, the Tribunal shall decide on the matter.	4. In the event of a dispute as to whether the Dispute Tribunal has competence under the present statute, the Tribunal shall decide on the matter.
5. As a transitional measure, the Dispute Tribunal shall have jurisdiction over: (a) a case transferred to it on 1 January 2009 from a joint appeals board or a joint disciplinary committee established by the United Nations or from another similar body established by a separately administered fund or programme, and (b) an application filed with the United Nations Administrative Tribunal before 1 January 2009, that has not been reviewed by the Administrative Tribunal as of 31 December 2008.	5. *All claims after 1 January 2009, except those pending action before the United Nations Administrative Tribunal or the Joint Appeals Boards and Joint Disciplinary Committees as of 31 December 2008, shall be submitted in accordance with the provisions of this statute.* [United States]. Owing to the budgetary implications of the transitional measures, delegations had requested that options be developed to guide future discussions on this issue (see **coordinator's options paper in annex I**).
Article 3	**Article 3**
1. An application under article 2(1) of the present statute may be filed by:	1. An application under article 2(1) of the present statute may be filed by:
(a) Any staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes;	(a) Any staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes;
(b) Any former staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes;	(b) Any former staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes;

Article as proposed in annex I to A/62/748 and Corr.1	*Alternative language proposed in informal consultations*
(c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes;	(c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes.
(d) Any person performing work by way of his or her own personal service for the United Nations Secretariat or separately administered United Nations funds and programmes, no matter the type of contract by which he or she is engaged, with the exception of persons in the following categories:	*Coordinator's summary of the state of discussions as of 3 July 2008*:
(i) Military or police personnel in peacekeeping operations;	Following the meeting of the Ad Hoc Committee, discussions among delegations on the scope of the new formal system have continued.
(ii) Volunteers (other than United Nations Volunteers);	In informal talks all delegations agreed that the new formal system of administration of justice established as of 1 January 2009 shall *as a minimum* apply to the persons covered by the present system which are listed in article 3(1)(a)-(c).
(iii) Interns;	Some delegations doubted, however, whether the time was ripe to decide now whether or not to include in the new system of administration of justice one or more of the other categories of persons listed in article 3(1)(d) of the draft statute as proposed in the Secretary-General's draft, or any of those proposed by different Member States.
(iv) Type II gratis personnel (personnel provided to the United Nations by a Government or other entity responsible for the remuneration of the services of such personnel and who do not serve under any other established regime); or	Some delegations requested further information on the remedies currently available to such non-staff personnel so as to be able to assess whether such remedies are sufficient or need to be improved. Delegations agreed that in case the currently available remedies turn out to be insufficient, all other possibilities to improve the remedies for non-staff need to be considered thoroughly before a final decision may be taken on whether or not to include them in the formal system.
(v) Persons performing work in conjunction with the supply of goods or services extending beyond their own personal service or pursuant to a contract entered into with a supplier, contractor or consulting firm.	Different views were expressed, however, as to when such an assessment should be undertaken. Whereas some delegations called for work on this issue to start as soon as possible, other delegations preferred such work to start during the sixty-third session of the General Assembly, or at a later date once the new system is established and sufficient experience has been gained.

Article as proposed in annex I to A/62/748 and Corr.1	*Alternative language proposed in informal consultations*
	State of the discussion at the end to the informal intersessional consultations on 3 July 2008 At the end of the informal intersessional discussions on 3 July 2008, delegations suggested that options be developed to guide future discussions on this issue (see **coordinator's draft options paper in annex II**)
2. A request for a suspension of action under article 2(2) of the present statute may be filed by a staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes.	2. A request for a suspension of action under article 2(2) of the present statute may be filed by **an individual, as provided in article 3(1) of the present statute**.
3. An application under article 2(3) of the present statute may be filed by a staff association recognized under United Nations staff regulation 8.1 (b).	To be retained in brackets until the eventual role of a staff association is agreed (see article 2, para. 3 above). Add a new paragraph 3 bis: "*The Tribunal shall not have any powers beyond those conferred under this Statute. Nothing in the statute shall limit or modify the powers of the organs of the United Nations, including the lawful exercise of their discretionary authority in the taking of individual or regulatory decisions, such as those establishing or amending the terms and conditions of employment with the United Nations*" [United States] **Alternative**: insert the following paragraph in the cover resolution: "*Affirms that the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall not have any powers beyond those conferred under their respective statutes and that the statutes shall not be otherwise interpreted as limiting or prejudicing the powers of the organs of the United Nations.*" [Coordinator, based on discussions]
Article 4 1. The Dispute Tribunal shall be composed of three full-time judges and two half-time judges.	**Article 4** 1. The Dispute Tribunal shall be composed of three full-time judges and two half-time judges.

Article as proposed in annex I to A/62/748 and Corr.1	*Alternative language proposed in informal consultations*
2. The judges shall be appointed by the General Assembly from a list of candidates compiled by the Internal Justice Council established pursuant to General Assembly resolution 62/228. No two judges shall be of the same nationality. Due consideration shall be given to gender and regional balance.	The judges shall be [*appointed/elected*] by the General Assembly **on the recommendation of** the Internal Justice Council **in accordance with** General Assembly resolution 62/228. No two judges shall be of the same nationality. Due **regard** shall be given to **geographical distribution** and **gender balance**.
3. To be eligible for appointment as a judge, a person shall:	3. To be eligible for appointment as a judge, a person shall:
(a) Be of high moral character; and	(a) Be of high moral character; and
(b) Possess at least 10 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions.	(b) Possess at least 10 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions.
4. A judge of the Dispute Tribunal shall be appointed for one non-renewable term of seven years. As a transitional measure, two of the judges (one full-time judge and one half-time judge) initially appointed, to be determined by drawing of lots, shall serve three years and may be reappointed to the same Dispute Tribunal for a further non-renewable term of seven years.	4. A judge of the Dispute Tribunal shall be appointed for one non-renewable term of seven years. As a transitional measure, two of the judges (one full-time judge and one half-time judge) initially appointed, to be determined by drawing of lots, shall serve three years and may be reappointed to the same Dispute Tribunal for a further non-renewable term of seven years. **A current or former judge of the Appeals Tribunal shall not be eligible to serve in the Dispute Tribunal.**
5. A judge of the Dispute Tribunal appointed to replace a judge whose term of office has not expired shall hold office for the remainder of his or her predecessor's term, and may be reappointed for one non-renewable term of seven years.	5. A judge of the Dispute Tribunal appointed to replace a judge whose term of office has not expired shall hold office for the remainder of his or her predecessor's term, and may be reappointed for one non-renewable term of seven years, **provided that the unexpired term is less than three years**.
6. A former judge of the Dispute Tribunal shall not be eligible for any subsequent appointment within the United Nations, except another judicial post.	6. A former judge of the Dispute Tribunal shall not be eligible[, *for a period of [3 [EU]][15*[G77 and China]*] years after the termination of his or her office*, [EU]] for any subsequent **post for which selection and appointment is the prerogative of the United Nations Secretary-General**.
7. The Dispute Tribunal shall elect a President.	7. The Dispute Tribunal shall elect a President.
8. A judge of the Dispute Tribunal shall serve in his or her personal capacity and enjoy full independence.	8. A judge of the Dispute Tribunal shall serve in his or her personal capacity and enjoy full independence.
9. A judge of the Dispute Tribunal who has a conflict of interest in a case shall recuse himself or herself.	9. A judge of the Dispute Tribunal who has**, or appears to have, a** conflict of interest shall recuse himself or herself from the case. **Where a party requests such recusal, the decision shall be taken by the President of the Tribunal.**

Article as proposed in annex I to A/62/748 and Corr.1	*Alternative language proposed in informal consultations*
10. A judge of the Dispute Tribunal may only be removed by the General Assembly on grounds of proven misconduct or incapacity.	10. A judge of the Dispute Tribunal may only be removed by the General Assembly **in case of** misconduct or incapacity.
11. A judge of the Dispute Tribunal may resign, by notifying the General Assembly through the Secretary-General.	11. A judge of the Dispute Tribunal may resign, by notifying the General Assembly through the Secretary-General. **The resignation shall take effect from the date of notification, unless the notice of resignation specifies a later date.**
Article 5	**Article 5**
The three full-time judges of the Dispute Tribunal shall normally perform their functions in New York, Geneva and Nairobi, respectively. The Dispute Tribunal may decide to hold sessions in other duty stations, as required by the caseload.	The three full-time judges of the Dispute Tribunal shall normally perform their functions in New York, Geneva and Nairobi, respectively. The Dispute Tribunal may decide to hold sessions in other duty stations, as required by the caseload.
Article 6	
1. The Secretary-General of the United Nations shall make the administrative arrangements necessary for the functioning of the Dispute Tribunal.	Add at the end: "*including provisions for the travel and related costs of staff whose physical presence before the Tribunal is deemed necessary by the Tribunal and for judges to travel as necessary to hold sessions at other duty stations.*" [Switzerland, G77 and China, referring to para. 34 of resolution 62/228; supported by EU, opposed by the United States].
2. The Registries of the Dispute Tribunal shall be established in New York, Geneva and Nairobi, each consisting of a Registrar and such other staff, as necessary.	2. The Registries of the Dispute Tribunal shall be established in New York, Geneva and Nairobi, each consisting of a Registrar and such other staff, as necessary.
3. The expenses of the Dispute Tribunal shall be borne by the United Nations.	3. The expenses of the Dispute Tribunal shall be borne by the United Nations.
4. Compensation ordered by the Dispute Tribunal shall be paid by the United Nations Secretariat or separately administered United Nations funds and programmes, as applicable and appropriate, or by the specialized agency, organization or entity that has accepted the jurisdiction of the Dispute Tribunal.	4. Compensation ordered by the Dispute Tribunal shall be paid by the United Nations Secretariat or separately administered United Nations funds and programmes, as applicable and appropriate, or by the specialized agency, organization or entity that has accepted the jurisdiction of the Dispute Tribunal.
Article 7	
1. Subject to the provisions of the present statute, the Dispute Tribunal shall establish its own rules.	1. Subject to the provisions of the present statute, the Dispute Tribunal shall establish its own rules **of procedure, which shall be subject to the approval by the General Assembly**.

Article as proposed in annex I to A/62/748 and Corr.1	*Alternative language proposed in informal consultations*
2. The rules shall include provisions concerning:	2. The rules shall include provisions concerning:
(a) Organization of work;	(a) Organization of work;
(b) Presentation of submissions and the procedure to be followed in respect thereto;	(b) Presentation of submissions and the procedure to be followed in respect thereto;
(c) Procedures for maintaining the confidentiality and inadmissibility of verbal or written statements made during the mediation process;	(c) Procedures for maintaining the confidentiality and inadmissibility of verbal or written statements made during the mediation process;
(d) Intervention by persons not party to the case whose rights may be affected by the judgement;	(d) Intervention by persons not party to the case whose rights may be affected by the judgement;
(e) Oral hearings;	(e) Oral hearings;
(f) Publication of judgements; and	(f) Publication of judgements;
(g) Other matters relating to the functioning of the Dispute Tribunal.	*(g) Functions of the Registries;*
	(h) Evidentiary procedure;
	(i) Suspension of contested administrative decisions;
	(j) Procedure for the recusal of judges;
	(k) Deadlines for the submission of materials by the parties as well as the consequences of failure to adhere to such deadlines, including dismissal of the case [United States]; and
	(l) Rules governing motions filed within the Tribunal, other than applications under article 2(1), including the requirement that the applicant provide to the Tribunal an explanation of the steps he or she has taken to informally resolve the dispute and/or exhaust his or her internal remedies [United States];
	(m) Other matters relating to the functioning of the Dispute Tribunal.
Article 8	**Article 8**
1. An application shall be receivable if:	1. An application shall be receivable if:
(a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute;	(a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute;
(b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;	(b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;

Article as proposed in annex I to A/62/748 and Corr.1	*Alternative language proposed in informal consultations*
(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required;	(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; **and**
(d) Unless the Dispute Tribunal has suspended or waived the deadline, the application is filed within the following applicable deadline:	(d) *The* application is filed within the following applicable deadline:
(i) In cases where a request for a management evaluation is required, the application must be filed:	(i) In cases where a management evaluation **of the contested decision** is required:
a. Within 30 days of the applicant's receipt of the response to the management evaluation; or	a. Within *[90]* **calendar** days **after** the applicant's receipt of the response **by management to his or her submission**; or
b. Within 30 days from the expiry of the 45-day response period, if no response to the management evaluation was provided;	b. Within *[90]* **calendar** days **after the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be** 30 calendar days after the submission of the decision to management evaluation for disputes arising at **Headquarters**, and 45 calendar days for other offices.
(ii) In cases where a request for a management evaluation is not required, the application must be filed within 30 days of the notification of the applicant's receipt of the administrative decision.	(ii) In cases where a management evaluation of the contested decision is not required, *within [90]* **calendar** days **after** the applicant's receipt of the administrative decision.
	(iii) The deadline provided for in subparagraphs (i) and (ii) above shall be extended to one year if the application is filed by any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes;
	(iv) Where the parties have sought mediation of their dispute within the deadline for the filing of an application under article 8(1)(d) but did not reach an agreement, the application shall be receivable if filed within *[60/90]* after the mediation has broken down in accordance with the procedures laid down in the terms of reference of the Mediation Division.

Article as proposed in annex I to A/62/748 and Corr.1	*Alternative language proposed in informal consultations*
	[*1bis (formerly proposed as article 6(2bis). Pursuant to the rules of procedure, and without prejudice to the other functions assigned to it in the rules, the Registry staff shall review each application to determine whether the application and the accompanying documents appear not to be sufficiently complete and/or not to be within the Tribunal's jurisdiction. Where the Registry staff believes that the application and the accompanying documents are not sufficiently complete, it shall advise the applicant accordingly. Where the Registry staff believes that an application is not within the Tribunal's jurisdiction, it shall refer the application to the Tribunal for appropriate action, including referral of the application back to the applicant for clarification or dismissal.* [United States] **Alternative:** add the role of the Registries in the list of items to be worked out in the rules of procedure under article 7(2) below. [EU, G77 and China]]
2. An application shall not be receivable if the dispute arising from contested administrative decision had been resolved by an agreement reached through mediation. However, an applicant may file an application to enforce the implementation of an agreement reached through mediation, which shall be receivable if the agreement has not been implemented in a timely manner or in accordance with the agreement.	2. An application shall not be receivable if the dispute arising from contested administrative decision had been resolved by an agreement reached through mediation. However, an applicant may file an application to enforce the implementation of an agreement reached through mediation, which shall be receivable if the agreement has not been implemented **and the application is filed within 90 days after the last day for the implementation as specified in the mediation agreement or, when the mediation agreement is silent on the matter, after the thirtieth day from the date of the signing of the agreement.** In the proposal above, add at the end: *"For the application to be receivable, the applicant must include a declaration stating that he or she has informed [the Organization][the Organization's representative, the Organization's signatory to the mediation agreement or his or her delegate, or the Mediation Division] of the alleged failure to implement and specifying the steps the applicant has taken to resolve the matter."* [United States; contra: EU]

Article as proposed in annex I to A/62/748 and Corr.1	*Alternative language proposed in informal consultations*
3. The Dispute Tribunal may decide to suspend or waive the deadlines in any case.	3. The Dispute Tribunal may decide *in writing, upon written request by the applicant,* to suspend or waive the deadlines *for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.* *3bis. Notwithstanding article 8(3), an application shall not be receivable if it is filed more than* **Option 1**: *[one year]*[alternative: *two years] after the applicant's receipt of the contested administrative decision, except for an individual filing an application under article 3(1)(c) of the present statute, in which case an application shall not be receivable if it is filed more than [two]*[alternative: *four] years after the applicant's receipt of the contested administrative decision.* [United States] **Option 2**: *five years after the applicant's receipt of the contested administrative decision."* [G77 and China]
4. The filing of an application shall not have the effect of suspending the execution of the contested administrative decision.	4. The filing of an application shall not have the effect of suspending the **implementation** of the contested administrative decision.
5. An application and other submissions shall be filed in any of the official languages of the United Nations.	5. An application and other submissions shall be filed in any of the official languages of the United Nations.
6. As a transitional measure, a case transferred on 1 January 2009 pursuant to article 2(5) of the present statute must also satisfy deadlines for transitional measures applicable to such cases to be provided separately by an administrative issuance.	(See recommendation on art. 1(5) above)
Article 9	**Article 9**
1. The Dispute Tribunal may order production of documents or such other evidence as it deems necessary.	1. The Dispute Tribunal may order production of documents or such other evidence as it deems necessary.
2. The Dispute Tribunal shall decide whether the personal appearance of the applicant is required at oral proceedings and the appropriate means for satisfying the requirement of personal appearance.	2. The Dispute Tribunal shall decide whether the personal appearance of the applicant **or any other person** is required at oral proceedings and the appropriate means for satisfying the requirement of personal appearance.
3. The oral proceedings of the Dispute Tribunal shall be held in public unless the Dispute Tribunal decides, at its own initiative or at the request of either party, that circumstances require the proceedings to be closed.	3. The oral proceedings of the Dispute Tribunal shall be held in public unless the Dispute Tribunal decides, at its own initiative or at the request of either party, that **exceptional** circumstances require the proceedings to be closed.

Article as proposed in annex I to A/62/748 and Corr.1	*Alternative language proposed in informal consultations*
Article 10	**Article 10**
1. The Dispute Tribunal shall suspend proceedings in a case, at the request of both parties to the application.	1. The Dispute Tribunal **may** suspend proceedings in a case at the request of **the** parties **for a time to be specified by it in writing**.
2. At any time during its deliberations, the Dispute Tribunal may order the following measures, which are final and without appeal:	2. At any time during **the proceedings**, the Dispute Tribunal may order **an interim measure, which is without appeal**, to provide temporary relief to either party**[**, *where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination*. [Coordinator, based on discussions]]
(a) An interim order to provide temporary relief to either party, including a suspension of action of the contested administrative decision; and	Keep the provision as proposed [G77 and China]. Delete this provision [United States; see also United States comments on article 2(2)].
(b) Referral of a case for mediation.	**Separate para. 2 bis: At any time during the deliberations, the Dispute Tribunal may propose to refer the case to mediation.** [*Unless [either party][the applicant] objects][With the consent of the parties]***, it shall suspend the proceedings for a time to be specified by it. If a mediation agreement is not reached within this period of time, the Dispute Tribunal shall continue with its proceedings unless the parties request otherwise.** [Coordinator, based on discussions]
3. Prior to a determination of the merits of a case, should the Dispute Tribunal find that a relevant procedure prescribed in the Staff Regulations and Rules or applicable administrative issuances has not been observed, the Dispute Tribunal may remand the case for institution or correction of the required procedure. In such cases, the Dispute Tribunal may order the payment of compensation for procedural delay, which is not to exceed the equivalent of three months' net base salary.	3. Prior to a determination of the merits of a case, should the Dispute Tribunal find that a relevant procedure prescribed in the Staff Regulations and Rules or applicable administrative issuances has not been observed, the Dispute Tribunal may**, with the concurrence of the Secretary-General,** remand the case for institution or correction of the required procedure**, which, in any case, should not exceed three months.** In such cases, the Dispute Tribunal may order the payment of compensation for procedural delay **to the applicant for such loss as may have been caused by such procedural delay**, which is not to exceed the equivalent of three months' net base salary.

Article as proposed in annex I to A/62/748 and Corr.1	*Alternative language proposed in informal consultations*
4. Where the Dispute Tribunal determines that an application is well founded, it may order one or more of the following:	4. **As part of its judgement,** the Dispute Tribunal **may** order one or more of the following:
(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered;	(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, **subject to subparagraph (b)**;
(b) Compensation, which shall not normally exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, order the payment of a higher indemnity in exceptional cases and shall provide the reasons for that decision;	(b) Compensation, *in the event that rescission or specific performance is not ordered under subparagraph (a) or as the respondent's alternative to rescission or specific performance, and* which shall not normally exceed the equivalent of two years' net base salary. *When the Dispute Tribunal orders, in exceptional cases, the payment of a higher indemnity, this indemnity shall not exceed the equivalent of three years' net base salary of the applicant;* [United States]
(c) Interest; or	*(c) To be kept in brackets; further consideration is needed, taking into account the financial implications as well as the fact that a decision whether to allow the Dispute Tribunal to award interests may have repercussions on the incentives or disincentives for personnel to have recourse to the formal system.*
(d) Costs.	*(d) To be kept in brackets, further consideration is needed, taking into account the financial implications, as well as the fact that the decision whether to allow the Dispute Tribunal to award costs may have repercussions on the incentives or disincentives for personnel to seek recourse to the formal system, and that it should also be considered in the light of the question of legal representation.*
5. Where the Dispute Tribunal determines that a party has manifestly abused the proceedings before the Tribunal, it may award costs against that party.	… it may award [*court*] costs against that party [United States]. *Further consideration is needed, taking into account the financial implications, as well as the fact that the decision whether to allow the Dispute Tribunal to award costs may have repercussions on the incentives or disincentives for personnel to seek recourse to the formal system, and that it should also be considered in the light of the question of legal representation.*

Article as proposed in annex I to A/62/748 and Corr.1	*Alternative language proposed in informal consultations*
6. The Dispute Tribunal may not award exemplary or punitive damages.	6. The Dispute Tribunal **shall** not award exemplary or punitive damages.
7. The Dispute Tribunal may refer appropriate cases to the Secretary-General or executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.	7. The Dispute Tribunal may refer appropriate cases to the Secretary-General or executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.
8. Judgements by the Dispute Tribunal shall normally be rendered by a single judge. The Dispute Tribunal may decide to refer a case to a panel of three judges to render a judgement.	**Cases before** the Dispute Tribunal shall [normally [delete: United States, Japan, see below]] be **considered** by a single judge. On the second sentence: **Option 1**: "The Dispute Tribunal may decide to refer the case *or a specific legal question* to a panel of three judges *when necessary by reason of the complexity or nature of the case or question.*" [EU; G77 and China] **Option 2**: No need for panels at the Dispute Tribunal. In case of a specific legal question in a pending case, the Dispute Tribunal shall have the power to refer that question to the Appeals Tribunal [United States]. This provision should be transferred to article 9 and become paragraph 1 of that article [Israel].
Article 11	**Article 11**
1. The judgements of the Dispute Tribunal shall be issued in writing and shall state the reasons on which they are based.	1. The judgements of the Dispute Tribunal shall be issued in writing and shall state the reasons, **facts and law** on which they are based.
2. The deliberations of the Dispute Tribunal shall be confidential.	2. The deliberations of the Dispute Tribunal shall be confidential.
3. The judgements of the Dispute Tribunal shall be binding upon the parties.	3. The **judgement** of the Dispute Tribunal shall be binding upon the parties. **It is subject to appeal in accordance with the statute of the Appeals Tribunal. In the absence of such appeal, it shall be executable.** [*Where an appeal is filed, it shall be executable as provided in and only following the decision of the Appeals Tribunal.* [United States, to make clear that the judgement shall be executable after the expiration of the time frame for appeal under the statute of the Appeals Tribunal]]

Article as proposed in annex I to A/62/748 and Corr.1	*Alternative language proposed in informal consultations*
4. The judgements of the Dispute Tribunal shall be drawn up in any of the six official languages of the United Nations, in two originals, which shall be deposited in the archives of the United Nations.	4. The judgements of the Dispute Tribunal shall be drawn up in any of the six official languages of the United Nations, in two originals, which shall be deposited in the archives of the United Nations.
5. A copy of the Dispute Tribunal's judgements shall be communicated to each party in the case.	5. A copy of the judgement shall be communicated to each party in the case. **The applicant shall receive a copy in the language in which the application was submitted unless he or she requests a copy in another of the official languages of the United Nations.**
6. The judgements of the Dispute Tribunal shall be published and made generally available by the Registry of the Tribunal.	6. The judgements of the Dispute Tribunal shall be published, **while protecting personal data,** and made generally available by the Registry of the Tribunal.
Article 12	**Article 12**
1. Either party may apply to the Dispute Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was issued, unknown to the Dispute Tribunal and to the party claiming revision, provided that such ignorance was not due to negligence. The application must be made within one year of the date of the judgement.	1. Either party may apply to the Dispute Tribunal for a revision of *an executable* [G77 and China] judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was **rendered**, unknown to the Dispute Tribunal [alternative: *the Tribunal that rendered the judgement* [United States, see also United States proposal in article 11(1) of the UNAT statute]] and to the party claiming revision, **always** provided that such ignorance was not due to negligence. The application must be made **within thirty days of the discovery of the fact and** within one year of the date of the judgement.
2. Clerical or arithmetical mistakes may at any time be corrected by the Dispute Tribunal either on its own motion or on the application of any of the parties.	2. Clerical or arithmetical mistakes**, or errors arising therein from any accidental slip or omission,** may at any time be corrected by the Dispute Tribunal, either on its own motion or on the application of any of the parties.
3. Either party may apply to the Dispute Tribunal for interpretation or an order for execution of a judgement.	3. Either party may apply to the Dispute Tribunal for **an interpretation of the meaning or the scope of the final judgement, provided that it is not under consideration by the Appeals Tribunal.**
	3 bis. Once a judgement is executable under article 11(3) of the present statute, either party may apply to the Dispute Tribunal for an order for execution of **the** judgement **if the judgement requires execution within a certain period of time and such execution has not been carried out.**
Article 13	**Article 13**
The present statute may be amended by decision of the General Assembly.	The present statute may be amended by decision of the General Assembly.

Appendix 1

Article 2(5): Transition to the new formal system

Options for further consideration presented by the Coordinator and discussed, but not agreed, during the intersessional informal consultations

Delegations are of the view that any arrangement concerning the transition of cases arising before 1 January 2009 from the current system of administration of justice to the new formal system should take into account the need to reduce as much as possible and feasible any overlap between the two systems, while at the same time ensuring that all staff members are able to challenge contested decisions effectively and receive appropriate formal resolution of such claims within a reasonable time.

To avoid uncertainties, a clear rule needs to be established for handling cases that have already been submitted to review before 31 December 2008, for the purpose of ensuring an efficient review process that avoids, as much as feasible, the duplication of work performed by the different bodies under the old and the new system. Such a clear rule would also inform staff members of their rights and responsibilities in contesting an administrative decision; it should not draw, however, categorical distinctions between certain *types* of cases so as to avoid a perception of inequality. The decision as to whether a matter that arises before 31 December 2008 should be addressed by the old or the new system should therefore depend on the actual *stage* that the review process initiated by the staff member has reached.

Several options could be considered:

Option 1: Article 2(5) on transitional measures as proposed by the Secretariat would **allow the JABs/JDCs and the current United Nations Administrative Tribunal to transfer cases pending before them to the new dispute tribunal after 1 January 2009,** the date at which the new formal system will come into existence. As it does not have any conditions attached to it, the Boards and the United Nations Administrative Tribunal could — if the General Assembly decides that they shall be discontinued on 31 December 2008 — basically transfer *all* cases pending before them to the new system, irrespective of the degree of work that the Boards or United Nations Administrative Tribunal have already invested in them. For obvious reasons, the statute itself is not the proper place to prescribe *which* cases in the end will be transferred, but by not placing any restrictions on the possibilities for transfer it would *allow* the transfer of all cases.

Option 2: The proposal that **after 1 January 2009** all claims shall be submitted under the new system **except those already "pending action before the United Nations Administrative Tribunal or the JABs/JDCs as of 31 December 2008"** would open the jurisdiction of the UNDT for cases arising *after* 1 January 2009, whereas all cases which at that date are already "pending action" before the United Nations Administrative Tribunal or the JABs/JDCs would be *excluded from the jurisdiction of the Tribunal* and would have to be continued under the old system. As a matter of consequence, the

JAB/JDC system and the United Nations Administrative Tribunal would need to exist beyond 31 December 2008 for the time needed by them to conclude their work on those "pending" cases.

As **"pending action before the JABs/JDCs or the United Nations Administrative Tribunal"** can refer to very different stages of the proceedings before those bodies, again a **number of options** come into play, each of which leads to a different number of cases to be continued under the old system while forwarding the remaining cases as of 1 January 2009 to the new system:

Option (a): A case should continue to be processed under the old system once a **complaint has been filed before the Joint Appeals Board/Joint Disciplinary Committee**, the argument being that after a case has been formally submitted to one of the existing bodies, that body should conduct and conclude the proceedings as provided for in the current system. The disadvantage is that probably a large number of cases would need to be completed under the old system way into 2009 or even beyond.

Option (b): A case should continue to be processed under the old system **if the respective Board or Committee has already been constituted at the request of the applicant**, the argument being that at this point at least *some* preparatory effort — selection of the persons to serve on the respective Board or Committee — has already been invested in the case so that that body should actually take up and conclude its work on the case.

Option (c): A case should continue under the old system only if the respective **body has actually started its work**, the argument being that there will always be some lapse of time between the formation of the Board/Committee and the date when the respective body will take up consideration of the case. If the Board/Committee has been established but has not yet started to work on the case, the case could still be resubmitted under the new system without causing too much duplication of work.

Option (d): A case should stay in the old system once the respective body has **concluded the "pleadings" phase**, i.e. after all documents have been submitted, oral hearings have been held and presentations have been made. A case that has reached this stage of deliberation should no longer be transferred out of the system, the argument being that requiring the new UNDT to "rehear" all of this and to start at the beginning would be a duplication of work and a waste of resources and would not be in the interest of justice.

Option (e): If it is the decision/recommendation by the JAB/JDC that counts, a case can still be forwarded to the new system **as long as the Joint Appeals Board/Joint Disciplinary Committee has not actually rendered its decision**. The disadvantage of this option would be that almost all of the substantive work of the Board/Committee would have to be repeated by the new UNDT.

Appendix 2

Article 3(1)(d): Scope *ratione personae* of the new system

Options for further consideration presented by the Coordinator and discussed, but not agreed, during the intersessional informal consultations

Option 1: Set up UNDT for United Nations staff as currently covered by the system (paragraph 1 (a)-(c)) as of 1 January 2009 and establish, for all other categories proposed by the Secretary-General or Member States, a mechanism of the General Assembly for further work (step-by-step approach), which could be

Option (a): the working group of the Sixth Committee on the Administration of Justice at the United Nations

Option (b): an Ad Hoc Committee

to take up work

Option (c): during the sixty-third session

Option (d): at the sixty-fourth session or after, once the UNDT is up and running and experience has been gained,

with a mandate to assess the means available to other persons working for the United Nations and to look into possibilities to improve the remedies available to them through

Option (e): as a first step, alternative/informal mechanisms

Option (f): alternative/informal mechanisms and, provided that the body established under options (a) or (b) above concludes that these are insufficient, inclusion in the formal system

Option (g): alternative mechanisms, as well as the inclusion of any of the additional categories proposed by the Secretary-General or Member States under the new formal system

based on

Option (h): the information contained in the note by the Secretary-General

Option (i): an additional report of the Secretary-General to be requested on possible ways to improve their means of addressing grievances through informal mechanisms

Option 2: Set up UNDT for United Nations staff and other categories of non-staff personnel mentioned in paragraph 1(d) and for those proposed by delegations bearing in mind the following positions expressed by different delegations:

Option (a): Accept subparagraph (d) as is;

Option (b): Accept the types of persons mentioned in the chapeau of subparagraph (d), but *include* also the categories mentioned in

subparagraph (d) (ii)-(iv), i.e. volunteers (other than United Nations volunteers), interns and type II gratis personnel, in the scope of the new system;

Option (c): Further improvement of redress for non-staff needs to be considered: decide later;

Option (d): Replace the categories listed in subparagraph (d) by:

- officials other than staff of the Secretariat;
- experts on mission who do not serve under a contract as a consultant or individual contractors;

Option (e): No extension of the current scope of the new system beyond the personnel listed in subparagraphs (a)-(c) now, continuation of the debate *at a later stage* (see above option 1), once the new system is up and running and sufficient experience has been gained.

Option 3: **As a first step**, the new formal system of administration of justice as of 1 January 2009 shall as a minimum apply to the persons covered by the present system which are listed in article 3(1)(a)-(c) of the draft UNDT statute.

As a next step, the Working Group of the Sixth Committee on the Administration of Justice to be established during the sixty-third session of the General Assembly shall continue to discuss other legal aspects of the administration of justice at the United Nations with a view to ensuring that effective remedies are available to all other categories of United Nations personnel, and to consider the types of recourse that are the most appropriate to this end.

Annex II

Coordinator's summary of the preliminary observations made in the informal consultations and the intersessional informal consultations on the draft statute of the United Nations Appeals Tribunal

Explanation of terms and presentation by the coordinator:

- **Text in bold** and without brackets corresponds to proposals made during the informal consultations by one or more delegations or the coordinator which found broad support on an informal and preliminary basis and/or were not opposed by any delegation.
- [*Text in italics with brackets*] corresponds to proposals made by one or more delegations which one or more other delegation could not immediately accept or for the consideration of which more time was requested.
- The denomination "**option**" in brackets is used when — in the assessment of the coordinator — proposals have been made that can be seen as alternative solutions to a certain problem or question that was raised by delegations in regard to the original draft. This denomination is used solely for purposes of presentation to enhance the readability of the text and should not be understood as precluding the possibility of merging or combining the proposals or parts thereof.
- Where the right-hand column indicates that delegations have asked for further information or clarification, it is understood that the deliberations will have to come back to the text in question at a later stage.

Article as proposed in annex II to A/62/748 and Corr.1	*Alternative language proposed in informal consultations and issues for further consideration*
Article 1	
A tribunal is established by the present statute to be known as the United Nations Appeals Tribunal.	A tribunal is established by the present statute **as the second instance of the two-tier formal system of administration of justice** [based on article 1 UNDT statute], to be known as the United Nations Appeals Tribunal.
Article 2	**Article 2**
1. The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal, in which it is asserted that the Dispute Tribunal has:	1. The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal, in which it is asserted that the Dispute Tribunal has:
(a) Exceeded its jurisdiction or competence;	(a) Exceeded its jurisdiction or competence;
(b) Failed to exercise jurisdiction vested in it;	(b) Failed to exercise jurisdiction vested in it;
(c) Committed a fundamental error in procedure that has occasioned a failure of justice;	*(c) Committed an error in procedure;* [United States; see (e) below]

Article as proposed in annex II to A/62/748 and Corr.1	*Alternative language proposed in informal consultations and issues for further consideration*
(d) Erred on a question of law; or	(d) Erred on a question of law; or
(e) Erred on a question of material fact.	– Replace with the following text: "(e) Erred on a question of fact [EU, supported by G77 and China], *resulting in a manifestly unreasonable decision.*" [EU] – Replace with the following text [United States, supported by CANZ]: *"(e) Erred on a question of fact.* *"2. The Appeals Tribunal may affirm, reverse, modify or remand the judgement of the Dispute Tribunal. It may also issue all orders necessary or appropriate in aid of its jurisdiction and consonant with this statute, including referral of a case to the President of the Dispute Tribunal for appropriate action.* *"3. The Appeals Tribunal shall not reverse, modify or remand the judgement of the Dispute Tribunal unless it concludes in writing that any error committed by the Dispute Tribunal had a material effect on the dispute.* *"4. The Appeals Tribunal in hearing or passing a judgement pursuant to article 2(1) shall consider the complete record of the Dispute Tribunal proceedings as transmitted by the President of the Dispute Tribunal pursuant to article 4* [see below]*; facts not contained in the record of the Dispute Tribunal, except as otherwise expressly provided herein shall be inadmissible.* *"(a) The Appeals Tribunal shall review the Dispute Tribunal's conclusions of law de novo, including conclusions respecting the Dispute Tribunal's jurisdiction, competence and procedure.* *"(b) The Appeals Tribunal shall review the Dispute Tribunal's findings of fact with substantial deference, treating them as conclusive unless the Dispute Tribunal has:* *"(i) Failed to consider evidence relevant to the issue that was proffered and was excluded or not admitted by the Tribunal;* *"(ii) Considered evidence not relevant to the issues properly before the Tribunal;*

Article as proposed in annex II to A/62/748 and Corr.1	*Alternative language proposed in informal consultations and issues for further consideration*
	"(iii) Failed to provide a factual basis in the judgement to support the judgement;
	"(iv) Otherwise made a clearly erroneous finding of fact.
	"(c) The Appeals Tribunal shall only reverse the findings of fact of the Dispute Tribunal if it determines that substantial evidence in the record of the Dispute Tribunal proceeding supports the contrary finding.
	"(d) In the event the Appeals Tribunal determines on the basis of the record of the Dispute Tribunal proceedings that some or all of the Dispute Tribunal's findings of fact are clearly erroneous, it shall consider whether to set them aside or reverse them.
	"(i) If the Appeals Tribunal sets aside or reverses any findings of fact, it shall assess the resulting facts of record against the applicable legal standard to determine whether those facts provide a basis to render a judgement and, if so, determine the appropriate judgement on appeal.
	"(ii) If the Appeals Tribunal determines that the resulting facts in the record of the Dispute Tribunal proceedings do not provide a basis to render judgement, it shall remand the case to the Dispute Tribunal for further consideration.
	"5. If the Appeals Tribunal determines that remand is appropriate under this statute and that the basis for the remand derives from an error made by the judge in the original Dispute Tribunal resulting from that judge's misconduct, incapacity or bias, the Appeals Tribunal shall remand the case for consideration by a different Dispute Tribunal judge and refer the matter to the President of the Tribunal for appropriate action.
	"6. In the event of a dispute as to whether the Appeals Tribunal has competence under the present statute, the Tribunal shall decide on the matter.

Article as proposed in annex II to A/62/748 and Corr.1	*Alternative language proposed in informal consultations and issues for further consideration*
	"Article 3
	[same text as paragraph 2 below]
	"Article 4
	"Upon the filing of an appeal, the President of the Dispute Tribunal shall transmit forthwith to the Appeals Tribunal the complete record of the Dispute Tribunal proceeding."
2. An appeal may be filed by either party (i.e. the applicant or the respondent) to a judgement of the Dispute Tribunal, or by the successor of such party.	2. An appeal may be filed by either party (i.e. the applicant, or **a person making claims in the name of an incapacitated or deceased applicant** or the respondent) to a judgement of the Dispute Tribunal.
3. The Appeals Tribunal shall decide upon its own competence.	3. **In the event of a dispute as to whether the Appeals Tribunal has competence under the present statute,** the Tribunal shall decide **on the matter**.
4. The Appeals Tribunal shall be competent to hear and pass judgement upon an application alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund arising out of the decision of the United Nations Joint Staff Pension Board submitted by:	*– These cases should be decided by the UNDT* [Russian Federation; supported by EU and G77 and China].
(a) Any staff member of a member organization of the Pension Fund which has accepted the jurisdiction of the Appeals Tribunal in Pension Fund cases who is eligible under article 21 of the regulations of the Fund as a participant in the Fund, even if his or her employment has ceased, and any person who has acceded to such staff member's rights upon his or her death;	– Text depends on the decision concerning the participation of the Pension Fund.
(b) Any other person who can show that he or she is entitled to rights under the regulations of the Pension Fund by virtue of the participation in the Fund of a staff member of such member organization.	
5. The Appeals Tribunal shall be competent to hear and pass judgement on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity concerned and the Secretary-General of the	– These cases should be decided by the UNDT [Russian Federation].
	– Text depends on whether or not specialized agencies actually conclude any such special agreement.

Article as proposed in annex II to A/62/748 and Corr.1	*Alternative language proposed in informal consultations and issues for further consideration*
United Nations *to establish* the terms of the Appeals Tribunal's jurisdiction. Such special agreement shall provide that the agency, organization or entity concerned shall be bound by the judgements of the Appeals Tribunal and be responsible for the payment of any compensation awarded by the Appeals Tribunal in respect of its own staff members and shall include, inter alia, provisions concerning its participation in the administrative arrangements for the functioning of the Appeals Tribunal and concerning its sharing of the expenses of the Appeals Tribunal.	Amend as follows: "... to *accept* the terms of the Appeals Tribunal's jurisdiction, *consonant with the present statute*" [Coordinator and United States]
Article 3	**Article 3**
1. The Appeals Tribunal shall be composed of seven judges.	1. The Appeals Tribunal shall be composed of seven judges.
2. The judges of the Appeals Tribunal shall be appointed by the General Assembly from a list of candidates compiled by the Internal Justice Council established pursuant to General Assembly resolution 62/228. No two judges shall be of the same nationality. Due consideration shall be given to gender and regional balance.	The judges shall be [*appointed/elected*] by the General Assembly **on the recommendation of** the Internal Justice Council **in accordance with** General Assembly resolution 62/228. No two judges shall be of the same nationality. Due **regard** shall be given to **geographical distribution** and **gender balance**.
3. To be eligible for appointment as a judge, a person shall:	3. To be eligible for appointment as a judge, a person shall:
(a) Be of high moral character; and	(a) Be of high moral character; and
(b) Possess at least 15 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions.	(b) Possess at least 15 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions.
4. A judge of the Appeals Tribunal shall be appointed for one non-renewable term of seven years. As a transitional measure, three of the judges initially appointed, to be determined by drawing of lots, shall serve three years and may be reappointed to the same Appeals Tribunal for a further non-renewable term of seven years.	4. A judge of the Appeals Tribunal shall be appointed for one non-renewable term of seven years. As a transitional measure, three of the judges initially appointed, to be determined by drawing of lots, shall serve three years and may be reappointed to the same Appeals Tribunal for a further non-renewable term of seven years. **A current or former judge of the Dispute Tribunal shall not be eligible to serve in the Appeals Tribunal.**
5. A judge of the Appeals Tribunal appointed to replace a judge whose term of office has not expired shall hold office for the remainder of his or her predecessor's term, and may be reappointed for one non-renewable term of seven years.	5. A judge of the Appeals Tribunal appointed to replace a judge whose term of office has not expired shall hold office for the remainder of his or her predecessor's term, and may be reappointed for one non-renewable term of seven years, **provided that the unexpired term is less than three years**.

Article as proposed in annex II to A/62/748 and Corr.1	*Alternative language proposed in informal consultations and issues for further consideration*
6. A judge of the Appeals Tribunal shall not be eligible for any appointment within the United Nations, except another judicial post.	A former judge of the Appeals Tribunal shall not be eligible (*for a period of 3 years after the termination of office, (EU)*) **for any subsequent post for which selection and appointment is the prerogative of the Secretary-General of the United Nations.**
7. The Appeals Tribunal shall elect a President and two Vice-Presidents.	7. The Appeals Tribunal shall elect a President and two Vice-Presidents.
8. A judge of the Appeals Tribunal shall serve in his or her personal capacity and enjoy full independence.	8. A judge of the Appeals Tribunal shall serve in his or her personal capacity and enjoy full independence.
9. A judge of the Appeals Tribunal who has a conflict of interest in a case shall recuse himself or herself.	9. A judge of the Appeals Tribunal who has**, or appears to have,** a conflict of interest shall recuse himself or herself **from the case. Where a party requests such recusal, the decision shall be taken by the President of the Tribunal.**
10. A judge of the Appeals Tribunal may only be removed by the General Assembly on grounds of proven misconduct or incapacity.	10. A judge of the Appeals Tribunal may only be removed by the General Assembly **in case of** misconduct or incapacity.
11. A judge of the Appeals Tribunal may resign, by notifying the General Assembly through the Secretary-General.	11. A judge of the Appeals Tribunal may resign, by notifying the General Assembly through the Secretary-General. **The resignation shall take effect from the date of notification, unless the notice of resignation specifies a later date.**
Article 4	
1. The Appeals Tribunal shall hold ordinary sessions at dates to be fixed by its rules, subject to the determination of the President that there is a sufficient number of cases to justify holding the session.	– This provision should be considered in the light of the decision yet to be taken as to where the Appeals Tribunal will hold its sessions; see also art. 5, para. 2 below.
2. Extraordinary sessions may be convoked by the President, as required by the caseload.	2. Extraordinary sessions may be convoked by the President, as required by the caseload.
Article 5	
1. The Secretary-General shall make the administrative arrangements necessary for the functioning of the Appeals Tribunal.	– Cf. discussions concerning article 6(1) UNDT statute –
2. The Registry of the Appeals Tribunal shall be established in New York, consisting of a Registrar and such other staff, as necessary.	– see above, art. 4, para. 1 –
3. The expenses of the Appeals Tribunal shall be borne by the United Nations.	3. The expenses of the Appeals Tribunal shall be borne by the United Nations.

Article as proposed in annex II to A/62/748 and Corr.1	*Alternative language proposed in informal consultations and issues for further consideration*
4. Compensation ordered by the Appeals Tribunal shall be paid by the United Nations Secretariat or separately administered United Nations funds and programmes as applicable and appropriate, or by the specialized agency, organization or entity that has accepted the jurisdiction of the Appeals Tribunal.	4. Compensation ordered by the Appeals Tribunal shall be paid by the United Nations Secretariat or separately administered United Nations funds and programmes as applicable and appropriate, or by the specialized agency, organization or entity that has accepted the jurisdiction of the Appeals Tribunal.
Article 6	
1. Subject to the provisions of the present statute, the Appeals Tribunal shall establish its rules.	1. Subject to the provisions of the present statute, the Appeals Tribunal shall establish its own rules **of procedure, which shall be subject to approval by the General Assembly**.
2. The rules shall include provisions concerning:	– Compare with list in article 7(2) UNDT statute –
(a) Election of the President and Vice-Presidents;	
(b) Composition of the Tribunal for its sessions;	
(c) Organization of work;	
(d) Presentation of submissions and the procedure to be followed in respect thereto;	
(e) Procedures for maintaining the confidentiality and inadmissibility of verbal or written statements made during the mediation process;	
(f) Intervention by persons not party to the case whose rights may be affected by the judgement;	– Replace subpara. (f) with: "*The filing of friend-of-court briefs, upon motion and with the permission of the Appeals Tribunal*". The United States deemed intervention by persons not parties to the case under review inappropriate at the UNAT level.
(g) Oral hearings;	– *Subpara. (g) needs modification for consistency with the new language suggested in art. 8 below* [United States].
(h) Publication of judgements; and	
(i) Other matters relating to the functioning of the Tribunal.	
Article 7	
1. An appeal shall be receivable if:	
(a) The Appeals Tribunal is competent to hear and pass judgement on the appeal, pursuant to article 2(1) of the present statute;	
(b) The appellant is eligible to file the appeal, pursuant to article 2(2) of the present statute; and	

Article as proposed in annex II to A/62/748 and Corr.1	*Alternative language proposed in informal consultations and issues for further consideration*
(c) The appeal is filed within forty-five days of receipt of the judgement of the Dispute Tribunal, or the Appeals Tribunal has suspended or waived the deadline.	– In subpara. (c), track language in the UNDT statute. After "or", add: "*, pursuant to article 7(3),*".
2. For purposes of applications alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund arising out of a decision of the United Nations Joint Staff Pension Board, an application shall be receivable if filed within ninety days from the receipt of the Board's decision.	– See comments to art. 2(4) above.
3. The Appeals Tribunal may decide to suspend or waive the deadlines in any case.	The question whether this provision should be identical to article 8(3) UNDT statute requires further consideration.
4. The filing of appeals shall not have the effect of suspending the execution of the judgement contested.	– Replace by: "*Without prejudice to article 9(4) of the present statute, t*he filing of appeals *shall have* the effect of suspending the execution of the judgement contested, *unless such judgement has already been executed in accordance with the statute of the Dispute Tribunal*." [G77 and China] [The thrust of this proposal (i.e. that the filing of appeals shall have the effect of suspending the execution of the judgement contested) was generally accepted. The precise formulation of the provision requires further consideration.]
5. An appeal and other submissions shall be filed in one of the official languages of the United Nations.	5. An appeal and other submissions shall be filed in **any** of the official languages of the United Nations.
Article 8	
1. The Appeals Tribunal may order production of documents or such other evidence as it deems necessary.	
2. The Appeals Tribunal shall decide whether the personal appearance of the appellant is required at oral proceedings and the appropriate means for satisfying the requirement of personal appearance.	2. The Appeals Tribunal shall decide whether the personal appearance of the appellant *or any other person* is required at oral proceedings and the appropriate means to achieve that purpose. [G77 and China, to align with art. 9(2) UNDT statute]
3. The judges assigned to a case will determine whether to hold oral hearings.	

Article as proposed in annex II to A/62/748 and Corr.1	*Alternative language proposed in informal consultations and issues for further consideration*
4. The oral proceedings of the Appeals Tribunal shall be held in public unless the Appeals Tribunal decides at its own initiative or at the request of either party, that circumstances require the proceedings to be closed.	4. The oral proceedings of the Appeals Tribunal shall be held in public unless the Appeals Tribunal decides, at its own initiative or at the request of either party, that *exceptional* circumstances require the proceedings to be closed. [G77 and China, to align with article 9(3) UNDT statute] **Alternative**: Replace the entire article with: "*The Appeals Tribunal shall determine whether to hear argument. If it determines to hear argument on the pleadings that have been filed before the Appeals Tribunal, it shall also determine whether to do so in closed or open session. It may only close the session if the Appeals Tribunal determines, at its own initiative or at the request of either party, that exceptional circumstances require the session to be closed.*" [United States].
Article 9	
1. The Appeals Tribunal may order, inter alia, the following: (a) Rescission of the contested decision; (b) Specific performance; (c) Compensation; (d) Interest; and (e) Costs.	– Cf. discussions concerning article 10(4) UNDT statute – – Further consideration is needed on whether the Appeals Tribunal should be reversing or granting appeal and remanding (usually, the latter should be used if there is an error of law to allow the UNDT to redetermine damages, if any) [United States].
2. Where the Appeals Tribunal determines that a party has manifestly abused the appeals process, it may award costs against that party.	– Cf. discussions concerning article 10(5) UNDT statute –
3. The Appeals Tribunal may not award exemplary or punitive damages.	3. The Appeals Tribunal **shall** not award exemplary or punitive damages.
4. The Appeals Tribunal may order interim measures and/or injunctive relief.	Delete [United States].
5. The Appeals Tribunal may remand a case to the Dispute Tribunal and decide to award payment in connection with its decision to remand due to procedural delay, which is not to exceed the equivalent of three months' net base salary.	– Delete. Further clarification is needed on the rationale of this provision [United States].

Article as proposed in annex II to A/62/748 and Corr.1	*Alternative language proposed in informal consultations and issues for further consideration*
6. The Appeals Tribunal may refer appropriate cases to the Secretary-General or executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.	6. The Appeals Tribunal may refer appropriate cases to the Secretary-General or executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.
Article 10	
1. Cases before the Appeals Tribunal shall normally be reviewed by a panel of three judges and decided by a majority vote.	1. Cases before the Appeals Tribunal shall normally be reviewed by a panel of three judges and **shall be** decided by a majority vote.
2. Where the President or any two judges sitting in a particular case consider that the case raises a significant question of law, at any time before judgement is rendered, the case may be referred for consideration by the whole Tribunal. Quorum in such cases shall be five judges.	2. Where the President or any two judges sitting in a particular case consider that the case raises a significant question of law, at any time before judgement is rendered, the case may be referred for consideration by the whole Tribunal. Quorum in such cases shall be five judges.
3. The judgements of the Appeals Tribunal shall be issued in writing and shall state the reasons on which they are based.	3. The judgements of the Appeals Tribunal shall be issued in writing and shall state the reasons, **facts and law** on which they are based.
4. The deliberations of the Appeals Tribunal shall be confidential.	4. The deliberations of the Appeals Tribunal shall be confidential.
5. The judgements of the Appeals Tribunal shall be binding upon the parties.	5. The judgements of the Appeals Tribunal shall be binding upon the parties.
6. The judgements of the Appeals Tribunal shall be final and without appeal, subject to the provisions of article 11 of the present statute.	6. The judgements of the Appeals Tribunal shall be final and without appeal, subject to the provisions of article 11 of the present statute.
7. The judgements of the Appeals Tribunal shall be drawn up, in any of the official languages of the United Nations, in two originals, which shall be deposited in the archives of the United Nations.	7. The judgements of the Appeals Tribunal shall be drawn up, in any of the official languages of the United Nations, in two originals, which shall be deposited in the archives of the United Nations.
8. A copy of the judgement shall be communicated to each party to the case.	5. A copy of the judgement shall be communicated to each party in the case. **The applicant shall receive a copy in the language in which the appeal was submitted unless he or she requests a copy in another of the official languages of the United Nations.**
9. The judgements of the Appeals Tribunal shall be published and made generally available by the Registry of the Tribunal.	The judgements of the Appeals Tribunal shall be published, **while protecting personal data,** and made generally available by the Registry of the Tribunal.

Article as proposed in annex II to A/62/748 and Corr.1	*Alternative language proposed in informal consultations and issues for further consideration*
Article 11	
1. Either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was issued, unknown to the Appeals Tribunal and to the party claiming revision, provided that such ignorance was not due to negligence. The application must be made within one year of the date of the judgement.	1. Either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was **rendered**, unknown to the Appeals Tribunal and to the party claiming revision, **always** provided that such ignorance was not due to negligence. The application must be made **within thirty days of the discovery of the fact and** within one year of the date of the judgement. – United States: replace with the following text: "*1. If a party applies to the Dispute Tribunal for a revision of a judgement during the pendency of an appeal, the Appeals Tribunal shall suspend its proceedings for the duration of the Dispute Tribunal's consideration of that application. If the Dispute Tribunal reverses its judgement, the Appeals Tribunal shall divest itself of jurisdiction over the application. If the Dispute Tribunal otherwise modifies its judgement, and the applicant seeks to proceed with the appeal, the Appeals Tribunal shall proceed on the basis of the Dispute Tribunal decision, as modified.*"
2. Clerical or arithmetical mistakes may at any time be corrected by the Appeals Tribunal either on its own motion or on the application of any of the parties.	2. Clerical or arithmetical mistakes**, or errors arising therein from any accidental slip or omission,** may at any time be corrected by the Appeals Tribunal either on its own motion or on the application of any of the parties.
3. Either party may apply to the Appeals Tribunal for interpretation or an order for execution of a judgement.	– Cf. discussions concerning article 12(3) UNDT statute –
Article 12	**Article 12**
The present statute may be amended by decision of the General Assembly.	The present statute may be amended by decision of the General Assembly.

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